(192) Department.

SERIES.

G.O. No. 2130

DATED

[Despatch Abstract.]

18 SEP 1920
GOVT OF MADRAS

His Excellency the Governor in Council,

Fort St. George,

M a d r a s.

Humble Memorial of Mrs. Sobina Peris Bai, widow of Simon Pinto, residing in Uruva, Boloor Village, Mangalore Taluk, South Kanara District.

UNDER SECY. TO GOVT. 20 SEP 1920 REVENUE DEPT.

Dated 11th September 1920.

Most Respectfully Showeth,

Being highly aggrieved by the G.O. No. 3025 Mis. Revenue, dated 23-8-1918 ratifying the assignments of certain lands in Boloor Village to poor persons and by the order of the Collector of South Kanara dated 5-9-1918, and of the Board of Revenue dated 5-8-1920 refusing to cancel the assignments of S.Nos. 444/1B & 1C and 464/2 & 4 of Boloor Village made under the special Darkhast Rules and to assign the same to the Memorialist, the Memorialist most humbly begs - leave to approach your Excellency with a prayer to re-vise and review the said G.O. and the order of the Board of Revenue and of the Collector and grant speedy and adequate relief to the Memorialist on the following grounds:-

(2). That the Memorialist is the mulgeni tenant holding kadim warg S.No. 44/7 of Boloor Village to which S.Nos. 444/1B & 1C and 464/2 & 4 form kumki, being within 100 yards therefrom.

(3) That in 1911 the Memorialist applied for

the said plots on darkhast on the ground that the said plots were in her possession and enjoyment also, as well as for the waste land beyond them, as it formed her frontage and though the Tahsildar refused to assign them to the Memorialist on the ground that they are very close to the town limits, the Revenue Divisional Officer, in appeal held a local inspection and and ordered the assignment to the Memorialist of the land beyond the kumki limits and with regard to the present plots held that "the plots forming kumki to the appellant's (i.e. the Memorialist's) lands cannot be assigned as they are too close to the public road, and as they are required for the Local Fund Department." (vide Order in R.A. Nos. 68 and 109 of 1911, dated 14-9-1911, certified copy of which is herein enclosed, No. 9).

(4). That in respect of the plots assigned to the Memorialist, the Memorialist's mulgar Srinivasa Prabhu and another appealed, and the Revenue Division-al Officer held that "the plots form frontage to the Respondent's (i.e. the Memorialist's) land, she has planted some trees thereon. The assignment made by the Tahsildar is correct. The appeals are dismissed." (vide order in R.A. Nos. 74 and 89 of 1912 dated 23-5-1912, certified copy of which is herein enclosed, No. 10).

(5). That the Memorialist's possession and enjoyment of her kumki land i.e. the plots, the subject matter of the present Memorial was also upheld in a suit- O.S. No. 445 of 1912 filed by the mulgar Srinivasa Prabhu, referred to above, against the Memorialist's

and which was decided in favour of the Memorialist by the District Munsif of Mangalore and which decision was confirmed by the District Judge of South Kanara in A.S. No. 166 of 1914. The plan produced in the said suit wherein S.No. 42/6 corresponds to the present plots, and the printed judgment of the Munsif and certified copy of the Appellate Judgment of the District Judge are herein enclosed,(Nos. 11, 12 and 13).

(6). That under these circumstances it is clear that the Memorialist is the best entitled to obtain the said plots both on the ground of kumki, and also on the ground of possession and enjoyment; the only objection to its assignment on darkhast being that it is too close to the public road, and was therefore required for the Local Fund Department.

(7). That subsequently in 1918, the Memorialist was however alarmed to learn that the said plots were all of a sudden assigned to two persons Salvadore Gonsalves and Madthu Pinto Bai under special Darkhast rules, and on obtaining certified copies the Memorialist learnt thatthe Village Officers and the Revenue Inspector recommended the assignment of these plots to those two persons on the ground that they form part of S.No. 42/1B reserved for assignment to the poorer classes, and the plots being situated within half a mile from the town limits, the objections of the "owners" are not entitled to any consideration; and that the Tahsildar had assigned the plots to them in 1915 as per order in D.R.C. No. 194 of 1325 dated 29-12-1915. Those persons however never took any steps to erect buildings thereon and therefore when the Tahsildar came to the locality in 1918 to hold an en-

quiry as to their failure to act according to the House Site Rules. the Memorialist came to know for the first time about the fact of the assignment. The certified copy of the order of the Tahsildar is herein enclosed, No. 14.

(8). That the Memorialist begs to submit that the assignment of these plots on such a basis to those two persons is against rules and equity, and is entire-ly based upon fraud, misrepresentation and suppression of the real facts of the case.

(9). That the Shanbhogue of the Village Y.B. Srinivasa Rao has even gone to the extent of preparing false records in the case for siding with those two persons; because it is alleged that the Memorialist gave her consent on 10-9-1915 (certified copy enclosed No.15) to the grant of the said plots to those two per-sons who are daughter and son-in-law respectively, whereas the Memorialist never made any such statement in their favour. The fact that the Memorialist is il-literate and the so-called consent statement is nei-ther attested by her husband nor by her son who are both literate, but bears only the marks said to be of the Memorialist clearly shows that the said statement is fabricated. Besides, there is absolutely no reason to suppose that the Memorialist who improved the said plots and has been anxious to obtain it on darkhast eversince 1911, would suddenly change her mind and give such a consent. Besides that the said Shanbhogue Y.B. Srinivasa Rao is capable of committing such fraud is evident from the fact that he has been subsequently dismissed from service and convicted for criminal mis-appropriation of Government money.

(10). That the Memorialist had given a plot S. No. 454/B measuring 85 cents to the son of these two persons on 13-10-1915 for their residence and there is absolutely no reason to believe that she would again give them these adjoining plots which measure 74 cents.

(11). That these two persons are husband and wife respectively and cannot be said to be poor persons entitled to the grant of new plots under the special Darkhast rules. At any rate, the plots being kumki to the Memorialist she is entitled to get them as against those persons.

(12). That the said plots lie between the Memorialist's holding and the plots assigned to her in 1911,-as as such the assignment of the intervening plots to others is a source of great hardship to her.

(13). That the said plots being the Memorialist's kumki, and recognised to be such in the order of the Divisional Officer in 1911, cannot be converte into land even for the purpose of disposal under the House Site Rules.

(14). That even before and after the assignment till1919 the Village Officers have collected Sivai Jama and Hakkal assessment for these plots from the Memorialist which also shows that the Memorialist has been in actual possession and enjoyment of the said plots and would not give her consent in favour of the others. The receipts are herein enclosed, Nos. 16, 17, 18, 19, 20 and 21.

(15). That even apart from all these facts there is the order of the Revenue Divisional Officer

of 1911 reserving the said plots for the use of the Local Fund Department. This certainly does not mean that it could be granted under the House Site Rules, ignoring altogether the preferential rights of the Me-morialist. The assignment, if at all, ought to have been made in favour of the Memorialist, and there is no ground at all for the assignment under the House Site Rules.

(16). That these facts do not seem to have been laid before the respective officers and before the Government and as such there has been great hardship and injustice in this case caused by the fraud and forgery and deliberate misrepresentation.

(17). That the true aspect of the case not having been put forward before the Government, and the ratification of the assignment by the Government having been made on such misrepresentation the G.O. No. 3025 Mis. Revenue dated 23-8-1918 is liable to be reviewed and cancelled by your Excellency.

(18). That the Memorialist applied to the Collector for the cancellation of the assignment made by the Tahsildar on 29-12-1915 in D.R.C. No. 194 of 1325 by means of a Revision Petition P.R. No. 827/18 Rev. dated 12-4-1918, together with an affidavit sworn by the Memorialist in respect of the fraud and irregularities set forth in the said Revision Petition, and specifically stating in the said affidavit that she was not examined by the Shanbhogue in connection with that case, and that she never gave her consent to the grant of the darkhast plots to the Respondents therein

viz the abovesaid Salvadore Gonsalves and Madthu Gonsalves and that she came to know of the grant in March 1918 and applied for certified copies of the order and other papers on 11-3-1918, and obtained them on 8-4-1918. Certified copies of the said Revision Petition and of the affidavit are herein enclosed, Nos. 4 and 5.

(19). That prior to this, the Mulgar of the Memorialist holding S.No. 44/7 also seems to have filed a petition before the Collector on 10-10-1916 praying that the said assignments may be cancelled and the same may be assigned to him as they form kumki to his kadim land.

(20). That the Memorialist did not get any order on her petition to the Collector dated 12-4-1918 and in spite of repeated applications for copy of the order on her petition, she was granted only an order on the petition of the Mulgar Srinivasa Prabhu and on further applications for copy of order on her petition she has been given a final endorsement dated 8-4-1919 to the effect that no separate order has been passed on her petition dated 12-4-1918. The certified copy of the Collector's order dated 5-9-1918 stating that the Government has ratified the said assignments and the endorsements dated 12-12-1918 and 8-4-1919 are herein enclosed-Nos. 6, 7 and 8.

(21). That the Memorialist however on receipt of the endorsement dated 8-4-1919 submitted a petition to the Board of Revenue dated 29-4-1919 through the Collector of South Kanara- P.R. 1650/Rev/19 praying that as the assignment was based on fraud, misre-

presentation and suppression of real facts, necessary steps might be taken to cancel the same, and to assign the plots to the Memorialist. Certified copy is herein enclosed No. 2.

(22). That the Memorialist hoped and expected that favourable orders would be passed by the Board on her petition dated 29-4-1919, submitted through the Collector and was encouraged in that hope by the fact that no unfavourable orders were received by her for over a year, until on 21-5-1920 she received - through the Shanbhogue of Boloor Village, the order of the Collector Dis. No. 2586 D/Rev. 19 dated 27-10-1919 stating that her petition to the Board has been withheld under Rule XVII(4) of the Rules for the submission of petitions to the Board. The said order is herein enclosed, No. 3.

(23). That it is really unfortunate that at every step the Memorialist has met with long delays and dis-appointment for no fault of hers, and even now she is unable to understand why the order passed by the Collector on 27-10-1919 and which was sent to the Divisional Officer on 28-10-1919 and to the Tahsildar on 30-10-1919, and to the Shanbhogue on 31-10-1919, was not delivered to her till 21-5-1920 by the Shanbhogue.

(24). That soon after the receipt of the Collect-or's aforesaid order the Memorialist submitted a peti-tion dated 1-6-1920 direct to the Board in respect of the Collector's two orders of 5-9-1918 and 27-10-19 respectively, and received an endorsement No. B 1798 dated 14-6-1920 to the effect that the petition should be re-submitted with an authenticated copy of the for-mer petition addressed to the Board through the Collector

within a month from the receipt of that order.

(25). That accordingly the Memorialist resubmitt -ed her petition on 28-6-1920 addressed to the Board, and on 4-9-1920 has received an order No. 1868 Routine dated5-8-1920 to the effect that her petition is dismissed. The said order is herein enclosed, No. 1.

(26). That the Memorialist believes that the oard of Revenue has refused to interfere in this - atter evidently on the ground that the assignment omplained of has been long ago ratified by the Govern ment and as such the Memorialist is constrained to ddress Your Excellency on account of the grave injustice and hardship occasioned by the Government ratification- G.O. No. 3025 Mis. Revenue dated 23-8-18.

27) That the Memorailist is herein enclosing plan (No. 22) of the entire locality to enable Your xcellency to fullycomprehend the entire facts of the ase so as to realise the injustice and hardship - aused to her by the ratification aforesaid of the ssignment.

28). That in the said plan No. 44/7 is the kadim ılgeni holding of the Memorialist; Nos. 91, 444, 464 ıd 99/1C1 and 1C2 are her kumki, within 1.. yards of er kadim mulgeni and No. 454/1A2 and B was assigned) her by the Divisional Officer in 1911 and the intervening waste viz the kumki portion aforesaid was eserved for Local Fund purposes at the time but the emorialist was raising vegetables and hakkal cultiva tion on the entire kumki portion both before and - fter assignment till 1919 and had enclosed the same. ıe receipts for the payment of Shivai Jama granted

by the Patel are herein enclosed. The Civil Courts also have decided that the said plots are in the possession of the Memorialist.

(29). That plots 444/1B and 1C and 464/2& 4 were assigned to the two persons aforesaid under House Site Rules on 29-12-1915 though prior to this on 13-10-1915 the Memorialist had already given to their son Deog Gonsalves the entire 454/B which had been assigned to the Memorialist in 1911. The two persons, the assigne-es are husband&wife, and are son-in-law and daughter of the Memorialist, who gave 454/B to their son (the grandson of the Memorialist) sometime prior to the as-signment. The Memorialist therefore would not and as a matter of fact did not consent to this assignment and has even given a sworn affidavit to that effect before the Collector, as soon as she came to know that a statement had been fabricated by the Shanbhogue. The adult husband and the adult sons of the Memorialist were alive then and would have attested the xtate-ment, if true. The Shanbhogue who prepared the said statement in collusion with those 2 persons was subsequently dismissed and also convicted for criminal misappropriation of Government money ; and but for such allegdd consent on the part of the Memorialist, the assignment would not have been made at all.

(30) That to the west of these plots Nos. 444 and 464 lies Nos. 452/1A assessed waste, portions of which viz 452/1C, 2 & 3, 458/1A1, 463/1A1 and 462/1,2, and 3 have been carved out and given on House Site Rules, and no objection lies from anybody as either they are beyond kumki limits or there is no kumki at all forthe adjoining wargdars as Nos. 44/3 and 43/1A,4

+ [illegible]

(34) That the delay caused by the fraud of the Shanbhogue therefore cannot come in the way of the Memorialist , and as she has been prompt in all her petitions, Your Excellency may be pleased to excuse the delay and afford relief to the Memorialist as against the effects of the deliberate fraud and mis-representation and fabrication of the Shanbhogue.

(35) In these circumstances, the Memorialist most humbly and respectfully prays that Your Excellency may be graciously pleased to peruse the entire records of the case, and considering the gross injustice and hardship caused to her, review the G.O. (H) No 3025 Mis. Revenue dated 23-8-1918 and cancelling the ratification of assignment, order the same to be assigned to the Memorialist.

(36). For which act of mercy, justice and equity, the Memorialist shall, as in duty bound, ever pray.

Dated September 1920.

List of documents filed.

1. 5- 8- 1920. Order of the Revenue Board, No. 1868.

2. 29- 4- 1919. Certified copy of the petition to the Revenue Board, through the Collector of South Kanara.

3. 27-10-1919. Order of the Collector of South Kanara.

4. 12- 4- 1918. Certified copy of the petition to the Collector of South Kanara.

5.	13- 4- 1918.	Certified copy of the affidavit of the petitioner filed before the Collector of South Kanara. pp 33- 34
6.	5- 9- 1918.	Do. Do. of the order of the Collector of South Kanara. pp 35
7.	12-12- 1918.	Endorsement of the Collector of South Kanara. p 37 ej-
8.	8- 4- 1919.	Do.
9.	14- 9- 1911.	Certified copy of the order by Revenue Divisional Officer, Manga -lore in R.A. Nos. 68 and 1909 of 1911. pp 39-40 ej-
10.	23- 5- 1912.	Do. Do. in R.A. Nos. 74 and 89 of 1912. pp 41-42 ej-
11.	7- 10-1913.	Printed copy of the judgment in O.S. No. 445 of 1912 on the file of the District Munsif of Manga- lore. pp 44-47 ej-
12.	21- 9-1914.	Certified copy of the judgment in Appeal Suit No. 166 of 1914 in the District Court of South Kanara. pp 48-49 ej-
13.	,,	Plan Ex. II produced in the said suit and appeal. pp 50 ej-
14.	29-12-1915.	Certified copy of the order of the Tahsildar in D.R.C. No. 194 of 1325. pp 51- ej-
15.	10- 9- 1915.	Certified copy of the fabricated statement said to be of the petitioner before the Shanbhogue.

16.	13- 3- 1914) 15- 4- 1914)	Receipt granted by Potail for Hakkal Beriz and assessment.	
17.	6- 3- 1915.	Do.	Do.
18.	8- 3- 1916.	Do.	Do.
19.	8- 3- 1917.	2 receipts	Do.
20.	3- 3- 1918.	Do.	Do.
21.	2- 3- 1919.	Do.	Do.
22.		Plan of the locality prepared for the purpose of this petition.	

Dated September 1920.

VS

[EN. 4636D/20]

Petition from Mrs Sr
Peris Bai 7/11/

Endt No. 4636 D/20-1/

Referred to the Boar
of Revenue for requi
remarks

23/2/21

R E V E N U E **DEPARTMENT.**

Received ..... 191 *Registered* 191 13-11-20

Subject.

Assignment - Darkhast (South Kanara)-Mangalore Taluk - Boloor village - Survey Nos. 444/1-B & 1-C and 464/2 & 4 - Memorial-Sobina Peris Bai.

RECEIVED 23 NOV 1920 REVENUE DEPT.

ENCLOSURES.
No. .....
Spare copies .....

Reference No. B.3793-20-1

Station Madras., *Dated the* 11th November 1920.

From (Name) J.A. Thorne Esquire., I.C.S.,
Secretary,
(Designation) Board of Revenue, Land Revenue.

To The Secretary to Government,
Revenue Department.

Sir,

M.E. Couchman Esquire., I.C.S.,
Commissioner of Land Revenue.

****

R E F E R E N C E:-

The Board submits its reply to Government Endorsement No. 4636 D-20-1, dated 23rd October 1920.

2. The attention of Government is invited to Board's Reference 1985-18-2, dated 13th August '18 (page 10 of the original Board's Proceedings herewith submitted) on which Government Order Miscellaneous No.3025 Revenue, dated 23rd

23rd August '18 was passed. The survey fields in question are the last four referred to in the above Board's Reference. As Government were pleased to ratify the assignments on the ground of the poverty of the assignees and other equitable considerations, the Board did not consider it necessary to reopen the matter and therefore, dismissed the memorialist's petition. During the two years which have elapsed since that date, the assignees have in all probability made further improvements, which fact makes the case against depriving of their house-sites ever stronger than before.

The memorialist contends that the lands assigned are her kumaki lands. 'Kumaki' cannot be claimed as a <u>right</u> but is a concession and therefore kumaki lands are entirely at the disposal of Government. The other contentions of the memorialist do not, in the Board's opinion, deserve any consideration.

Secretar

To the Secretary to Government, Revenue Department, with Board's Proceedings No. 2707/18 (Routine) dated 28-8-18 to be returned and a memorial and enclosures.

A.S/12-11

12.11.20

ER 14/21 **NOTES.** 64 04 Page 3

46368/20-2

Cm No ~~46~~ 46384 dy 5.1.21

Recd. in fair copying section 6.1.21

Copied by DD/6.1

Compared by 6.1.21

Signed

Despatched

Dp(1) 6.1.21

5/1/21

Board's Reference No
B. 3793 - 20 - 1 dy 11-11-19

Assignment - Darkhast (South Kanara) - Mangalore taluk - Bolour village - Survey Nos 441/1-B & 1-C and 464/2A4 - Memorial Solina Peris Bai

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In G.O. No 3025 Rev dy 23-8-1918 the Governme ratified the assignment of the lands referred to above on the strength of the statement of the Board of Revenue that the assignees were poor people. The Colle had also reported to the Board that Mrs Solina Peris Bai had given her Consent to the assignment of the plots in question In her memorial dy 11-9-1920 referred to the Board of Revenue for remarks with this Office End No 4

23-10-1920 Mrs Sobinas
ris Bai disputes the
:curacy of these state-
nts. The Board of
venue is therefore requested
ascertain and report the
al facts of the case.

S
Sec
23/12/20

To the Board of Revenue (R.)
with B.P. 2707 Rond 9
28-8-1918 in original +
an memorial & enclosures
in original to be returned.

DESPATCHED
6 JAN 1921

THE SECRETARY TO GOVERNMENT,

REVENUE DEPARTMENT,

MADRAS GOVERNOR'S CAMP, OOTACAMUND.

ಪಿ.ಆ.1(a).147.7

In continuation of her Memorial dated 11-9-1920 submitted to His Excellency the Governor in Council praying for review of the G.O. No: 3025 Mis.Revenue dated 23-8-1918 and cancellation of the ratification of assignment of S. Nos. 444/1B & 1C and 464/2&4 of Boloor village made under Special Darkhast Rules and for the assignment of the same to her, the Memorialist Mrs. Sobina Peris Bai, widow of Simon Pinto, residing in Urwa, Boloor village, Mangalore Taluk, South Kanara, begs to state as follows:-

1. The said Memorial come on for enquiry before the local Revenue Officers, and the Memorialist --- believes that they were satisfied that the facts stated in paras (8), (9) & (29) of her Memorial were true, that the alleged statement of the Memorialist said to have been made by her on 10-9-1915 giving her consent for the assignment to others is not a genuine document but is a deliberately forged document, and that the Memorialist was no party to the same, and it was only a fabricated piece of evidence to show that the Memorialist waived her right to her own Kunki--within which limits the said plots lie; and as such the other assignment was based on fraud, misrepresentation and suppression of the real facts of the case.

2. The Memorialist further begs to submit that the enquiry has also shown that, as stated by the Memorialist in para 11 of her Memorial, the assignments

to husband and wife separately of the said plot under the House Site Rules were highly objectionable, and looking to their status and position they were not the sort of persons, whom the Government want to provide for under the Special Darkhast Rules. There has been regular cheating by the said persons in respect of getting the said plots under the House Site Rules.

3. The Collector visited the locality recently and expressed that all the four plots assigned under the Special Darkhast Rules to those two persons would be set aside, but afterwards said that he may consider about the improvements made on 444/1B & 1C by the said persons and allow it to stand.

4. The Memorialist in this connection begs to state that the fact that they have effected improvements on those plots is no ground for confirming the assignment of the said plots to them, because the improvements were made by them on the plots which had been obtained by them by clear fraud, forgery and cheating; and when the title to the said plots is thus found to be defective and unsound, it is not at all equitable that they should be permitted to take advantage of and thereby enjoy the benefits of their own fraud &c, and secure both the plots and the improvements thereon. This is not a case where a bona-fide purchaser without notice is found to have a defective title--where the law provides for him the value of improvements and not even the land itself.

5. The Memorialist is however prepared to deposit with the Government the value of the improvements standing thereon, for favour of disposal, as it deems fit and reasonable, and on the condition the said plots may be

ordered to be assigned to her.

6. In these circumstances, the Memorialist humbly prays that in view of the grave injustice done to her by the perpetration of fraud, forgery and cheating, for depriving her of her own Kumki and for obtaining it under the Special Darkhast Rules, the said assignments may be cancelled entirely and the Memorialist may be ordered to be granted all the said plots-- if necessary on the deposit by her of the value of the improvements standing thereon.

7. For which act of justice, equity and mercy, the Memorialist shall as in duty bound every pray.

MANGALORE)
21- 5 - 1921.) + ಅವರ ಕೈಯಾನೆ ಹೆಬ್ಬೆಟ್ಟಿನ ಛಾಪು

Received in the fair-copying section 2/6/21

Copied by S.S. 2/6.

Examined by [illegible]

Signed [illegible]

Despatched 2.6

(C No 3070 D/21) 04

Petition from Mrs Lobina
Peons Bari dy 21-5-1921

Encl No 4636 D/21-3 dy 2-6-21

Referred to the Board of Rev
for remarks in Continuation
Govt. G.M. No 4636 D/20-2
dy 5-1-1921

RK.
30/5/21

24 70

Revenue **DEPARTMENT**

REVENUE - I
4655
K

Received 7 19 *Registered*

UNDER SECY. TO GOVT. 19.8.1921 REVENUE DEPT.

Subject.

Assignment - Darkhast (South Kanara) Mangalore taluk - Boloor village - S.Nos. 444/1-B & 1-C and 464/2 and 4 - Memorial Sobina Peris Bai.

****

ENCLOSURES.

re copies

Reference No. B.169-21-3

Station Madras. *Dated the* 17th August 1921. 19-

From (Name) L.H.Arndt Esquire., I.C.S.,

(Designation) Secretary, Board of Revenue,

Land Revenue.

To The Secretary to the Government of Madras,

Revenue Department.

Sir, L.T.Harris Esquire., C.S.I., I.C.S.,
Commissioner of Land Revenue.

Read the following:---

Memorandum from Government, Revenue Department, No.4636 D/20-2, dated the 5th January 1921.

Board's Reference thereon No.B.169-21-1, dated 18th January 1921.

Letter from R.H.Ellis Esquire., I.C.S., Collector of South Kanara, D.Dis.No.525-V.1-21, dated 17th May 1921.

Assignment - Darkhast - Mangalore Taluk - Boloor village S.Nos.441/1B,1C and 464/2,4 - Memorial - Sobina Peris Bai.

I resubmit herewith the memorial of Sobina Peris Bai and its enclosures.

2. The Tahsildar's report (copy enclosed) deals fully with the points raised in the Government memorandum under reference. I have also personally inspected the place and made enquiries. I find it is quite impossible ~~to impossible~~ to justify the grant of the plots in question for (1) it was made to husband and wife so as to enable them to get a double portion (2) they were not poor and (3) the consent of the memorialist was clearly, I think, never obtained. I regard the grant as having been fraudulently obtained and I would propose cancelling that of 464/2 and 4 which only contain trees and shrubs and - leaving the assignees with 444/1B,1C which contain the house worth about Rs.1,000.

3 The records of enquiry now held together with those of S.D.R. 194/1325 are enclosed.

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ENCLOSURE.

Resubmitted with all the enclosures through the Revenue Divisional Officer, Mangalore.

2. The two points on which the Government calls for a detailed report are:---

(1) Whether the assignees are poor people and

(2) whether Mrs. Sobina Peris Bai has given her consent to the assignment of the plots in question.

3. Point (1). The plots in question which lie within 100 yards of kadim warg land S.No.44/7 belonging to the petitioner on mulgeni right are

	Extent.
(a) Plots 444/1B	0- 6 cents.
464/1B (or 464/2B as per petitioner's sketch)	0- 33
	0- 39 cents.

These plots have been assigned to Salvador Gonsalves under the house-site rules by my predecessor Mr.M.Pais (now Acting Deputy Collector, Coondapoor in his order dated 29th December 1915 in S.D.R. 194/1325, the records of which are herewith submitted.

	Extent.
(b) Plots 444/1C	0 - 11 cents.
464/1D (or 464/4D as per petitioner's sketch) ...	0 - 24 ..
	0- 35 cents.

These have been assigned to Madthu Pinto Bai, also under the house-site rules by the said officer in the said order. The latter assignee is the daughter of the petitioner and wife of the former assignee. The two assignees live together as husband and wife in one and the same house. The plots are contiguous to one another, and measure 74 cents in the aggregate. In fact the newly built tiled house which the 1st assignee says has cost him about Rs.1500 stands in plots 444/1B and 444/1C. There is no partition wall or any other boundary on the ground to distinguish

plots assigned to the 1st assignee from those assigned to the 2nd assignee. It is a question therefore whether the grant of 74 cents of land forming the aggregate extent of the 4 plots to one and the same family for common residence is not against the spirit of the special house-site rules.

As regards the poverty of the assignees, I solicit reference to their statements dated 1-9-1915 and 24-8-1915. In the statement dated 1-9-1915 assignee Salvador Gonsalves says that he is a poor man owning no land whatever and living by cooly work and in the statement dated 24-8-1915 assignee Madthu Pinto Bai says that she is a poor woman owning no house etc. They have studiously omitted to mention in their statements the important fact that they are husband and wife and live together in the same house.

In the statement now taken down by me on 10-4-1921, 1st assignee Salvador Gonsalves says that in 1915 he was a carpenter getting a monthly income of Rs.30 or 40. His son was then employed on board the steamer in Bombay and was getting a monthly pay of about Rs.100. Just about 2½ months before the grant now in question i.e., on 13-10-1915 his son purchased for Rs.50 S.No.454/B measuring 85 cents from his grandmother the present petitioner as per registered sale deed dated 13-10-1915. This plot is in the possession and enjoyment of his parents the two assignees of the plots in question. These facts seem to throw sufficient light on the question whether the assignees could be brought under the category of poor persons at the time of the grant.

4. Point (2). Mrs. Sobina Peris Bai, the petitioner denies having given her consent to the assignment of the 2 plots and denies having signed with marks the statement dated 10-9-1915 said to have been taken from her by the then shanbhogue, Srinivas Rao and attested by one G.D.Souza to the effect that she has no objection to the assignment of the plots to the applicants the two assignees referred to above. For this denial she has given reasons in paragraphs 9 to 13 of her memorial. I have now examined the above attesting witness in view to see how far her denial can be believed. The statement of the attesting witness taken down by me on 3-4-1921 is submitted. He too denies having attested the above statement dated 10-9-1915 and says that the signature of G.D. Souza as attesting witness in the said statement is not his and does not even resemble his though he says that he attested two statements of the petitioner taken down by the shanbhogue in 1915 giving her consent to the assignment of the plots. The latter part of his present statement is apparently now intended to support the assignees and loses much of its significance when read with the former part containing his denial of his signature. Besides, the then shanbhogue Srinivas Rao who took down the petitioner's statement dated 10-9-1915 appears to be an unscrupulous man. He was removed from service on serious charges of misappropriation and misconduct. Please vide Collector's Proceedings Reference P.R. 2000 Revenue, dated 21-11-1916.

I understand that after his removal he was convicted of theft by the 1st Class Bench of Mangalore and underwent rigorous imprisonment for one month or so. Hence the denial of the petitioner and the attesting witness when considered with the unscrupulous character of the man who took down the statement seems to lead to but one conclusion viz., that the statement is not genuine. It therefore seems to me that there is no valid consent of the petitioner to the assignment of the plots.

5. The plots in question contain the following main improvements:

Plots 444/1B and 444/1C contain a tiled house worth about Rs.1,000.

Plot 444/1C contains 2 pit cocoanut plants and plot $\frac{444}{1B}$ 7 cocoanut pit plants, one well worth about Rs.75 and 5 jack plants. The cocoanut pit plants may be valued at annas 12 per plant and jack plants at annas 8.

****

Endorsement of the Government, Revenue Department, No. 4636 D/20-3, dated 2nd June 1921.

Board's Reference thereon No.B.169-21-2, dated 15-6-1921.

The memorialist is willing to pay for the improvements on all the plots. The Collector's present report does not exactly show the cost of these improvements. There is discrepancy between the Collector's present report and the statement of improvements attached

page 8 of BP Roll 2707 25-6-1921

his

letter dated 24-7-1918. The Collector is therefore requested to ascertain and report exactly the value of all improvements on (1) 444/1C and 444/1B (2) 464/2 and 464/4 (including that of shrubs, trees etc.)

Letter from R.H. Ellis Esquire..I.C.S..Collector of South Kanara, D.Dis.No.3599-21-V-1, dated 2nd August 1921.

Assignment - Darkhast - Mangalore Taluk - Boloor village S.Nos.444/1 B and 1C and 464/2 & 4 - Memorial - Sabina Paris Bai - List of improvements - submitted.

Board's Reference No.B.169-21-2, dated 15th June 1921.

I submit herewith a statement showing the value of all improvements now existing on plots 444/1B and 1C and 464/2 and 4. The main house and the kitchen house appear to have been more or less completely rebuilt since the submission of the statement of improvements with this office letter dated 24th July 1918.

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tatement showing particulars of improvements made on plots 444/1B, 1C and 464/2, 4 of Bolur village.

Valuations made by the Tahsildar.

o. and sub vision.	Particulars of improvements existing on the plots.	Estimated value.
1.	2.	3.
444/1-B.	Planting tree group 1 and vegetables.	Rs. 0- 8- 0
	Portion of the main tiled house stands in S.No.444/1C also.	.. .. ..
		0- 8- 0

1.	2.	3.
2.444/1C.	Plantain trees 10 groups.	1- 14- 0
	Cocoanut pit-plants 2.	2- 0- 0
	Nettle fence etc.	0- 8- 0
	Stone wall of single stone and kattapuni of rough stones 13 yards. ...	2- 0- 0
	One kitchen house tiled on bamboo roof, mud wall, 4 stone pillars L.33' x B.12' x H. 6' ...	100- 0- 0
	Main house standing in S. Nos.444/1B & 1C mud wall with stone pillars L.35' x B.24' x H.9'	
This value is estimated with reference to another newly built house of stone standing in an adjoining plot.	Hall 16½' x 13' x 13' with 4 doorways and 2 windows. One door only provided with shutters. 2 rooms 10' x 7' x 7' with one door each and 2 windows in one room and one window in the 2nd room. 2 rooms opending into the hall 11' x 7' x 7' with one window self in the wall each. Foundation 35' x 24' x 4'	900- 0- 0
444/1C.	Cost of levelling the land in S.No.444/1B & 1C.	50- 0- 0
	Cowshed. ..	12- 0- 0
		1068- 6- 0
3. 464/2.	One cowshed thatched and old.	5- 0- 0
	One well- stone pillars 2. 37' deep 9' diameter.	
	Parapet wall on one side.	40-- 0- 0

1.	2.	3.
	Cocoanut pit-plants. 7.	14- 0- 0
	Jack plant 1.	1- 0- 0
	Jack pit plants a. 3	1- 0- 0
	One stone cross and its stone pedestal. ...	25- 0- 0
	Teak(sagwani) pit plants-3.	0- 8- 0
	Fruit pit-plants 10.	2- 0- 0
	Gooseberry tree.	1- 0- 0
	Scrub jungle.	0- 8- 0
		90- 0- 0
4. 464/4.	Jack pit-plants 2.	0- 4- 0
	Sagwani pit-plants 8.	1- 0- 0
		1- 4- 0
	Grand total.	1160- 2- 0

Rupees one thousand one hundred and sixty and annas two only.

REFERENCE:--

Submitted to Government.

2. In the circumstances reported by the Collector, the Board considers that the proper course is to cancel all the grants and to reassign the plots to the memorialist on condition that she pays for the improvements effected by the previous grantees.

Secretary.

To the Secretary to Government,
Revenue Department with two memorials and enclosures and one B.P.2707 Routine, dated 28-8-18 and one plan.

A.S.R

Subject. Assignment of land in
Mangalore taluk, S. Kamaria
C.N. 4b?6 D-J on mr.

To Under Secretary.

The memorialist requests for a reconsideration of the Orders passed in G.O mis 3025 Revenue dated 23.8.1918 ratifying the assignment of certain plots of land made by the Tahsildar of Mangalore to certain poor persons of Bolur, Village Mangalore taluk. The main objection urged by the memorialist for the assignment of the plots of land mentioned by her is that they formed Kumki to her Kadim mulgeni lands. This fact was before the Govt when orders in G.O mis 3025 Revenue dated 23.8.1918 were passed. The assignment was made in 1915. The orders ratifying the assignment ~~were~~ passed in 1918. It is submitted that at this distance of time the Govt may decline to reconsider the orders passed in the above G.O ~~mis 3025 Rev dy 23.8.18~~

2 A draft order is submitted for approval

S.
4.10.20.

CRP
23.9.20.

27.9.20

The assignment was irregular but was confirmed on the recommendation of the Board in 1918 (G.O 3025 dated 23.8.18) We can hardly think of going back on that now. Draft in approval

H. M.

EK 10/10/20

Please call for report
the petition it would appear
the whole question was discussed
and while the Board is
mind that the attitude
how hopeless the memorialists
are that they are not entitled

19.10.20

EH 20/10/20

To Under Secy

A draft Endt. is submitted
for approval.

23.10.20

PK
20.10.20

Issued as Endt No 46363 D/20-1 of 23.10
[C No 57455 D/20] From the Board of Revenue,
Ref. No B. 3793/20-1 D 11-9-20

To U.S

The Board's report is on p62 + 63 c/f.
The Board did not apparently get a
report on the present memorial.
It appears from the original of B. P No 2707
of 28-8-14 (3) that the Collector of South
Kanara originally recommended the

Para 9 p4 c/f
+ Para 29 p10 c/f

b61 C.F.
pp62 + 63 ref.

cancellation of the assignment already made. The Board's subsequent decision appears to have been influenced by the fact that the assignees were reported to be poor. Apparently the true facts of the whole case were carefully suppressed by the Shanbhogue. The extent of the improvements made by the assignees is not known. It is for orders whether a full report on the several allegations made in the petition should be called for from the Collector. If the question is to be reopened the Collector may be asked for information at A above & he may be asked to report whether the petitioner is prepared to compensate the assignees for the improvements. (In this connection please see the Collector's report at A on p2 of the B.P 2707/28-1-13 (5))

Tolle
22-11-20

S/ If we propose to review the order we must face the question of compensation.

28/11/20

Is it open to Government to cancel an assignment ratified by Sully & being known at the time that it was irregular when it was ratified

E R 30/11

To Under Secy

With reference to Secretary's Query at page 3 supra please see para 17 of B.S.O 15. Under the Board's power to set aside, cancel or amend any decision in a darkhast case on being satisfied that..... the decision was passed under a mistake of fact or owing to misrepresentation or fraud, is unlimited. The Board can on the motion of a Collector also exercise this power in case of material irregularity. Please in this connection the notes at pgs 24-25 flagged (A).

1933 of Bom S.O. Vol I.

S/ It is open to the Board to amend any decision which is not in conformity with the rules or which was passed owing to misrepresentation. If it is not a fact that the grantees are poor misrepresentation may be assumed. The order was certainly ultra vires

The Board can modify the decision.

But as the original order was ratified by Govt the

P.K.
10.12.20

grantees would think have a cause of action for damages against Govt. in respect expenditure with regard to the strength of the Govt. order ratifying the assign.

14.

It is clear I think that the Board cannot deal with the matter as the previous decision was ratified by Government. It has therefore passed out of their hands. The question is whether it is open to Government to cancel revoke the previous order and cancel the assignment. I have some doubt if it is legal to do so & whether it would not amount to a breach of contract which might lead to suit. Even passing the previous order Government were aware that there was irregularity in the assignment but condoned it. Would it not perhaps be as well to consult the Advocate General

H. M.

We ratified the assignment on the statement of the Board that the assignees were poor people. Also, so far from the petitioner objecting, was asked by the Collector that we had given our assent to the assignment. It is now alleged that both these statements are false. Before doing anything further I think we ought to find out from the Collector what the real facts are. If the statements of the petitioner prove to be correct, we can then examine the question of law

8
17.12.2
to Board
Draft O. M. & Show cause

E.R.D. 17/12

pp 64-65 C.F. Issued as G.O. No 4636 D/20-2 dt 5-1-21

pp 66-68 C.F. [C.No 3070 D/21] Memorial from Mrs Solima Peris Bai dt 21-5-1921

p. 69 C.F. Endt to the Board of Rev LR No 4636-A/20. dt 2-6-1921

pp 70-78 C.F. [C.No 4655 D/21] From the Board of Rev (LR) No B. 169-21-3 dt 17-8-1921

To Under Secy

The Collector now reports that the assignees cannot at the time of the grant be brought under the category of poor persons and that the Consent of the Memorialist was never obtained vide para 2 of Collector's letter at page 71 C.F. and the detailed report of the Tahsildar at pp 71-75 C.F. The Board recommends that the grants having been fraudulently obtained should all be now cancelled and re assigned to the memorialist on Condition that she pays for the improvements effected by the previous grantees. Vide page 78 C.F. The memorialist has expressed her willingness to pay for the improvements on all the plots. - Vide pp 67-68 C.F.

As regards the question as to whether it would be legal to cancel the assignment please see the Notes at pp

pp 4 - 6 supra

For orders

S/ Ct may cancel the assignment provided that memorialist pay full value of improvement the amount to be paid prior to delivery & possession

2 As the question, Response, Ct to cancel the assignment has been raised perhaps C_2 may wish to ask C_2 for his opinion.

29 L

This is rather a tricky case.
The disputed land was granted under subclause 3 to para 9 of B.S.O. 15. This subclause is found at page 62 of the Appendix, volume ~~to~~ II of the B.S.O but is to be read as part of the main Order ~~apparently~~. Vide page 61.
The grant was wrongly made ~~off~~ for it is clear that the grantees did not come under the category of poor persons. They had already bought one peice of land or rather their son had done so.
Also the rules would not cover the grant of two sites to husnband and wife.
On the other hand

(1) The special rule for South Kanara seems to be limited by the general rules in other respects. In this case clause 17 applies (at page 33 B.S.O. vol 1.) The period for limitation within which the Collector might revise has run out. The Board has still however power to inter fere under the latter part of the section on the ground of mistake of fact.
(2)The grant was made in 1915 and ratified in 1918 formally. No public interests are concerned.
(3) The stongest reason for not interfering on the ground of the private interests is that the parties are all related to one another. The Memorialist is the Mother of ~~XXXXXX~~ one of the grantees who is the wife of the other The wrong if any is not therefore so great as it seems.
(4) I am not upin the law of South Kanara so cannot say what the position would be in law there in case they go to court amongst themselves. Perhaps C 3 could advise on this.
I would advise no action subject to ~~XXX~~ his opinion.

I should certainly venture to see my way to welcome the advice of Hon'ble Colleagues C3 before. I can my mind to do so. This is indeed unfortunate case, in that the Govt. to satisfy the requirement not spite of. that I was irregular. I am sure that the matter in true facts of the case have not been brought to notice & appeared as sufficient in law to be on of the Extraordinary powers was passed in my

8. 9. 21.

The Rowlatt rules are of executive rules, a fault is made in breach of the rules & is convicted, the fault stands. No doubt as in the case of any other person, if a fault is obtained & found, on his representation, that person may sue to set aside the fault, subject to the law, & which if he knows of the fault ratified it there is no remedy. I think the position stands to the Govt also, unless they reserve power to cancel the fault themselves on specific grounds. If their action is challenged in Court they will have to prove that the fault was cancelled on these grounds. In such Case I would advise a re-in Conference, therein in all probability they will have to face a battle of the hands of the original framers.

May order be issued as at A above?

9/9/21

Dep. M.33
Dep
Dispatched 9.9.21
Returned 17.9.21

Endt - After due consideration of the removal
the Govt ~~decision~~ to withdraw in the
above petition

To Under Secy

For the sake of future reference this order may, it is submitted issue in the Miscellaneous Series. To the petitioner will go in Endt. form

A draft order is submitted

P.K.
20/9/21

Sectt. II-10 (a)—26,596—11-4-21.

	Date.	Initials.
When received for Fair-copying.	27/9.	
When copied ..	27/9.	T.N.A.
When examined	27/9.	VA.
When signed	28/9	
When despatched	28/9	DD

Assignment - Darkhast (South Kanara) - Mangalore taluk - Bolor village - Survey Nos 444/1-B & 1-C and 464/2 & 4 - Memorial Sobina Peris Bai - rejected

READ AGAIN G.O. No. 3025, dated 23 — 8 — 1918

" " " " " 192

READ ALSO:—

C. No. 46362/20 From the Mrs Sobina Peris Bai No. dated 11-9-1920.

End to the Board of Rev(R) No 46362/20-1 dt 23.10.192

" " 5745 D/20 " " Board of Rev (R) " B.3793-20-1 " 11-11-1920.

C.M. to the Board of Rev(R) No 4636 D/20-2 dt 5-1-1921

3070 D/21. Mrs Sobina Peris Bai dt 21-5-1921

" " " " " End to the Board of Rev(R) " 46363/20.3 2-6-192

4655 D/21. Board of Rev (R) " B. 169. 21-3 dt 17-8-192

ORDER. No. 2130, dated 26.9. 192

Mis.

DP

26/9/21

After due consideration of the memorial the Government find themselves unable to interfere in the memorialists behalf

DS

26921

P.K.

23.9.21

DESPATCHED
28 SEP 1921

To

Mrs Sobina Peris Bai,
Bolor village,
Mangalore taluk.
South Kanara Dist.

in End form. (with enclosure returned) pp 15-60 CF

The Board of Rev(R). (Q to)
with original dt B.P 2707 dt 28.8.
1 plan.